

REMARKS

Claims 1 – 40 are pending in the Application.

Claims 13-15, and 26-28 were objected to due to informalities: the phrase “in greater than,” should have read “is greater than.” Amended claims are enclosed, and therefore it is submitted, the objection should be withdrawn.

Claims 1-36 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-15 and 19-29 of U.S. Patent No. 6,610,904. A terminal disclaimer in accordance with 37 CFR 3.73(b) and a Statement under 37 CFR 3.73(b) are enclosed herewith. Applicant respectfully requests withdrawal of the rejection and allowance of claims 1-36.

Claims 37, 38 and 40 are rejected under 35 U.S.C. 102(c) as being anticipated by Davis et al. U.S. Patent No. 6,603,052 (“Davis”). Applicant respectfully traverses the rejection.

All of these claims have, in the preamble, the limitation of “...avoiding a wetness sensation in a topsheet...” Applicant is unable, in Davis, to find any reference to a topsheet. Rather, Davis has an apertured film without any topsheet (see, e.g., Figure 1.) Thus, Davis does not anticipate the claims.

Indeed, it is submitted that Davis in fact teaches away from the claims insofar as teaching that an apertured film is necessary to its top surface. At Col. 8, line 64 to Col. 9, line 13, Davis teaches that its top surface allows the “present invention, in effect, grips the surgical implements and allows a surgeon to keep them handy and proximate to the surgical site without significant fear that they will slide onto the floor.”

Thus, it is submitted that Davis cannot be an anticipatory reference. Accordingly, Applicant respectfully requests the withdrawal of the rejection and allowance of claims 37, 38 and 40.

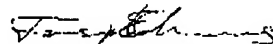
Claim 39 is rejected under 35 U.S.C. 10(a) as being unpatentable over Davis. Applicant respectfully traverses the rejection. Claim 39 depends from claim 37 and shares all the limitations of the base claim. As was noted above, Davis, in fact, teaches away from the invention of claim 37, and so, it is submitted, teaches away from the invention of claim 39. Moreover, Applicant is unable to find in Davis any teaching, suggestion nor disclosure in Davis of such modification as the Examiner suggests.

Accordingly, Applicant respectfully requests the withdrawal of the rejection and allowance of claim 39.

CONCLUSION

Therefore, for the reasons given above, Applicant submits the application is now in condition for allowance and Applicant respectfully requests early issuance of the Notice of Allowance.

Respectfully submitted,



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